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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANA RUTH LIXENBERG, an Individual,

Plaintiff,

- against -

COOGI PARTNERS, LLC, individually and
doing business as “Coogi Australia,” a New
York Limited Liability Company; and DOES
1-10,

Defendants.

COOGI PARTNERS, LLC, doing business
as “Coogi Australia,” a New York Limited
Liability Company,

Counterclaimant,

- against -

DANA RUTH LIXENBERG, an Individual,

Counter-Defendant.

Case No. 2:17-cv-02537-MWF-MRW

**STIPULATED
PROTECTIVE ORDER**¹

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following

¹ This Stipulated Protective Order is based on the model protective order provided in Magistrate Judge Michael R. Wilner’s procedures.

1 Stipulated Protective Order. The parties acknowledge that this Order does not confer
2 blanket protections on all disclosures or responses to discovery and that the protection it
3 affords from public disclosure and use extends only to the limited information or items
4 that are entitled to confidential treatment under the applicable legal principles. The
5 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
6 Protective Order does not entitle them to file confidential information under seal; Civil
7 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
8 will be applied when a party seeks permission from the court to file material under
9 seal.

10 1.2 GOOD CAUSE STATEMENT

11 This lawsuit involves claims of copyright infringement. Plaintiff alleges that
12 Defendant infringed its copyright in a photograph by placing an identical or at least
13 substantially similar image on Defendant's sweaters. Defendant alleges that Plaintiff
14 infringed its copyright in the pattern and visual material of a sweater by
15 photographing that sweater and thereafter licensing, distributing, marketing, selling,
16 supplying and/or otherwise using that photograph of the sweater. The parties
17 anticipate taking discovery regarding each other's income, costs and expenditures
18 relating to the subject photograph and sweaters. Therefore, discovery may require the
19 disclosure of sensitive financial information. Discovery may also require the
20 disclosure of sensitive commercial information, such as the identity of customers,
21 manufacturers, suppliers, etc. The parties would be harmed by the public disclosure
22 of such commercially sensitive information, particularly to Defendant's competitors in
23 the industry.

24 2. DEFINITIONS

25 2.1 Action: *Lixenberg v. Coogi Partners, LLC, C.D. Cal. Case No. 2:17-*
26 *cv-02537-MWF-MRW.*

27 2.2 Challenging Party: a Party or Non-Party that challenges the
28 designation of information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
2 how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
4 Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
6 their support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL.”

10 2.6 Disclosure or Discovery Material: all items or information, regardless
11 of the medium or manner in which it is generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced or
13 generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a matter
15 pertinent to the litigation who has been retained by a Party or its counsel to serve as
16 an expert witness or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
23 this Action but are retained to represent or advise a party to this Action and have
24 appeared in this Action on behalf of that party or are affiliated with a law firm which
25 has appeared on behalf of that party, and includes support staff.

26 2.11 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation support
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or
14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
15 compilations of Protected Material; and (3) any testimony, conversations, or
16 presentations by Parties or their Counsel that might reveal Protected Material.

17 Any use of Protected Material at trial will be governed by the orders of the
18 trial judge. This Order does not govern the use of Protected Material at trial.

19 4. DURATION

20 Once a case proceeds to trial, all of the information that was designated as
21 confidential or maintained pursuant to this protective order becomes public and will
22 be presumptively available to all members of the public, including the press, unless
23 compelling reasons supported by specific factual findings to proceed otherwise are
24 made to the trial judge in advance of the trial. See Kamakana v. City and County of
25 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
26 showing for sealing documents produced in discovery from “compelling reasons”
27 standard when merits-related documents are part of court record). Accordingly, the
28 terms of this protective order do not extend beyond the commencement of the trial.

1 Even after final disposition of this litigation, the confidentiality obligations
2 imposed by this Order will remain in effect until a Designating Party agrees otherwise
3 in writing or a court order otherwise directs. Final disposition will be deemed to be the
4 later of (1) dismissal of all claims and defenses in this Action, with or without
5 prejudice; and (2) final judgment herein after the completion and exhaustion of all
6 appeals, rehearings, remands, trials, or reviews of this Action, including the time
7 limits for filing any motions or applications for extension of time pursuant to
8 applicable law.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**
11 Each Party or Non-Party that designates information or items for protection under
12 this Order must take care to limit any such designation to specific material that
13 qualifies under the appropriate standards. The Designating Party must designate for
14 protection only those parts of material, documents, items, or oral or written
15 communications that qualify so that other portions of the material, documents, items,
16 or communications for which protection is not warranted are not swept unjustifiably
17 within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations
19 that are shown to be clearly unjustified or that have been made for an improper
20 purpose (e.g., to unnecessarily encumber the case development process or to impose
21 unnecessary expenses and burdens on other parties) may expose the Designating
22 Party to sanctions.

23 If it comes to a Designating Party's attention that information or items that it
24 designated for protection do not qualify for protection, that Designating Party must
25 promptly notify all other Parties that it is withdrawing the inapplicable designation.

26 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
27 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
28 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
6 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
7 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
8 portion or portions of the material on a page qualifies for protection, the Producing
9 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 A Party or Non-Party that makes original documents available for inspection
12 need not designate them for protection until after the inspecting Party has indicated
13 which documents it would like copied and produced. During the inspection and before
14 the designation, all of the material made available for inspection will be deemed
15 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
16 copied and produced, the Producing Party must determine which documents, or
17 portions thereof, qualify for protection under this Order. Then, before producing the
18 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
19 to each page that contains Protected Material. If only a portion or portions of the
20 material on a page qualifies for protection, the Producing Party also must clearly
21 identify the protected portion(s) (e.g., by making appropriate markings in the
22 margins).

23 b) for testimony given in depositions, the Designating Party shall identify as
24 “CONFIDENTIAL” all protected testimony at the time of the deposition or within
25 thirty (30) calendar days thereafter. Any portions of a deposition transcript designated
26 “CONFIDENTIAL” shall be separately bound and endorsed “CONFIDENTIAL”.

27 c) for information produced in some form other than documentary and for
28 any other tangible items, that the Producing Party affix in a prominent place on the

1 exterior of the container or containers in which the information is stored the legend
2 “CONFIDENTIAL.” If only a portion or portions of the information warrants
3 protection, the Producing Party, to the extent practicable, will identify the protected
4 portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive the
7 Designating Party’s right to secure protection under this Order for such material.
8 Upon timely correction of a designation, the Receiving Party must make reasonable
9 efforts to assure that the material is treated in accordance with the provisions of this
10 Order.

11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
13 designation of confidentiality at any time that is consistent with the Court’s
14 Scheduling Order.

15 6.2 Meet and Confer. The Challenging Party will initiate the dispute
16 resolution process (and, if necessary, file a discovery motion) under Local Rule 37.1
17 et seq.

18 6.3 The burden of persuasion in any such challenge proceeding will be on
19 the Designating Party. Frivolous challenges, and those made for an improper purpose
20 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
21 expose the Challenging Party to sanctions. Unless the Designating Party has waived
22 or withdrawn the confidentiality designation, all parties will continue to afford the
23 material in question the level of protection to which it is entitled under the Producing
24 Party’s designation until the Court rules on the challenge.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the
2 conditions described in this Order. When the Action has been terminated, a
3 Receiving Party must comply with the provisions of section 13 below (FINAL
4 DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
13 well as employees of said Outside Counsel of Record to whom it is reasonably
14 necessary to disclose the information for this Action;

15 (b) the officers, directors, and employees (including House Counsel) of
16 the Receiving Party to whom disclosure is reasonably necessary for this Action;

17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the Court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Professional
23 Vendors to whom disclosure is reasonably necessary for this Action and who have
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information;

27 (h) during their depositions, witnesses and attorneys for witnesses, in the
28 Action to whom disclosure is reasonably necessary, provided the witness signs the

1 form attached as Exhibit A hereto. Pages of transcribed deposition testimony or
2 exhibits to depositions that reveal Protected Material may be separately bound by the
3 court reporter and may not be disclosed to anyone except as permitted under this
4 Stipulated Protective Order; and

5 (i) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
8 IN OTHER LITIGATION

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this Action as
11 “CONFIDENTIAL,” that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification
13 will include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the subpoena
16 or order is subject to this Protective Order. Such notification will include a copy of
17 this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with
21 the subpoena or court order will not produce any information designated in this action
22 as “CONFIDENTIAL” before a determination by the court from which the subpoena
23 or order issued, unless the Party has obtained the Designating Party’s permission. The
24 Designating Party will bear the burden and expense of seeking protection in that court
25 of its confidential material and nothing in these provisions should be construed as
26 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
27 directive from another court.
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1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party’s
11 confidential information, then the Party will:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality agreement
14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party’s confidential information responsive to the discovery request.
23 If the Non-Party timely seeks a protective order, the Receiving Party will not produce
24 any information in its possession or control that is subject to the confidentiality
25 agreement with the Non-Party before a determination by the court. Absent a court
26 order to the contrary, the Non-Party will bear the burden and expense of seeking
27 protection in this court of its Protected Material.

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
2 Protected Material to any person or in any circumstance not authorized under this
3 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
4 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to
5 retrieve all unauthorized copies of the Protected Material, (c) inform the person or
6 persons to whom unauthorized disclosures were made of all the terms of this Order,
7 and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain
12 inadvertently produced material is subject to a claim of privilege or other protection,
13 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
14 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
15 may be established in an e-discovery order that provides for production without prior
16 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
17 parties reach an agreement on the effect of disclosure of a communication or
18 information covered by the attorney-client privilege or work product protection, the
19 parties may incorporate their agreement in the stipulated protective order submitted
20 to the court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
3 only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party's request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information in
6 the public record unless otherwise instructed by the court.

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4, within 60
9 days of a written request by the Designating Party, each Receiving Party must return
10 all Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
14 must submit a written certification to the Producing Party (and, if not the same person
15 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
16 category, where appropriate) all the Protected Material that was returned or destroyed
17 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the
19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
20 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
21 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
22 attorney work product, and consultant and expert work product, even if such materials
23 contain Protected Material. Any such archival copies that contain or constitute
24 Protected Material remain subject to this Protective Order as set forth in Section 4
25 (DURATION).

26 14. Any willful violation of this Order may be punished by civil or criminal
27 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
28 authorities, or other appropriate action at the discretion of the Court.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: November 8, 2017 By: /s/ Scott Alan Burroughs
Scott Alan Burroughs, Esq.
Trevor W. Barrett, Esq.
Justin M. Gomes, Esq.
DONIGER /BURROUGHS
Attorneys for Plaintiff

Dated: November 8, 2017 By: /s/ Joshua R. Mandell
Joshua R. Mandell
Haley C. Greenberg
Ira S. Sacks
Benjamin R. Joelson
AKERMAN LLP
Attorneys for Defendant

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: November 8, 2017 
HON. MICHAEL R. WILNER
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [full name], of _____
4 [full address], declare under penalty of perjury that I have read in its entirety and
5 understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Central District of California on _____ [date] in the
7 case of *Lixenberg v. Coogi Partners, LLC, C.D. Cal. Case No. 2:17-cv-02537-*
8 *MWF-MRW*. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Stipulated Protective Order to any person or entity except in
13 strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____ [full
18 name] of _____ [full address and
19 telephone number] as my California agent for service of process in connection with
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order.

22 Date: _____

23 City and State where signed: _____

24 Printed name: _____

25 Signature: _____
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